85-1488

No.

Supreme Court U.S.
FILED
MAR 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

GIOVANNI LIGNAROLO and MARIO LIGNAROLO,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

STEPHEN M. GLYNN
SHELLOW, SHELLOW & GLYNN, S.C.
222 East Mason Street
Milwaukee, Wisconsin 53202
(414) 271-8535
Attorney for Petitioners

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTIONS PRESENTED

1. Does the Travel Act, 18 U.S.C. §1952, require proof of the accused's membership in the business enterprise constituting the charged "unlawful activity"?

2. Does the distribution subsection of the Travel Act, 18 U.S.C. §1952(a)(1), require proof that proceeds of the unlawful activity were distributed to members of the "business enterprise"?

PARTIES BELOW

The parties to the proceeding in the United States Court of Appeals for the Eleventh Circuit, the court whose judgment is sought to be reviewed, are the parties before this Court.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
PARTIES BELOW	ii
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
STATUTE INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT:	
I.	
BY EXTENDING THE TRAVEL ACT'S REACH FAR BEYOND ANYTHING CONGRESS INTENDED, THE ELEVENTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT, AND IT HAS RENDERED A DECISION IN CONFLICT WITH DECISIONS OF OTHER FEDERAL COURTS OF APPEALS	7
A. Congress Did Not Intend To Encompass Legitimate Suppliers Of Services Within The Reach Of The Travel Act; Instead, Only Those Businesspeople With A Stake In The Underlying Unlawful Enterprise Were Travel Act Targets	8
B. In Applying The Travel Act To A Merchant Uninvolved In The Illegal Business Enterprise, The Eleventh Circuit Has Created A Conflict In The Circuits	12

II.

THE ELEVENTH CIRCUIT'S FAILURE TO REQUIRE PROOF THAT THE DISTRIBUTION OF THE UNLAWFUL ACTIVITY'S PROCEEDS WAS TO A MEMBER OF THE ILLEGAL BUSINESS ENTERPRISE CONFLICTS WITH THE HOLDING OF THE DISTRICT OF COLUMBIA CIRCUIT 14

CONCLUSION 17

APPENDIX

1—Opinion in *United States v. Lignarolo*, 770 F.2d 971 (11th Cir. 1985) ..... App. 1

2—Order in *United States v. Lignarolo*, denying rehearing ..... App. 19

TABLE OF AUTHORITIES

Cases PAGE

Perrin v. United States, 444 U.S. 37 (1979) ... 11

Rewis v. United States, 401 U.S. 808 (1971) ... 11

United States v. Gibson Specialty Company, 507 F.2d 446 (9th Cir. 1974) 12, 13, 14

United States v. Lightfoot, 506 F.2d 238 (D.C. Cir. 1974) 15, 16

United States v. Nardello, 393 U.S. 286 (1969) ... 9

Rules, Statutes and Constitutional Provisions

18 U.S.C. §1952 ..... 2, 12, 13

18 U.S.C. §1952(a)(1) 3, 10, 15

18 U.S.C. §1952(b) 6

18 U.S.C. §1952(b)(2) 9

18 U.S.C. §§1961-68 8

Congressional Materials

Legislation Relating To Organized Crime: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary, 87th Cong., 1st Sess. 339 (1961) 9, 10, 11

Pub. L. No. 91-452, Tit. IX, 84 Stat. 941, 947 (1970) 8

S. Rep. No. 655, 87th Cong., 1st Sess. 2-3 (1961) . 9, 10

Others

Annual Survey Of White Collar Crime—Travel Act, 19 Am. Crim. L. Rev. 173, 340 (1981) ... 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

GIOVANNI LIGNAROLO and MARIO LIGNAROLO,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

OPINION BELOW

The opinion of the Court of Appeals is reported at 770 F.2d 971 (11th Cir. 1985). It is reproduced in the Appendix to this Petition at App. 1-18.

JURISDICTION

The judgment sought to be reviewed by writ of certiorari was dated and entered September 10, 1985. Rehearing was denied by a per curiam order of the Eleventh

Circuit issued and filed November 14, 1985. App. 19. The statutory provision which confers on this Court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C. §1254(1).

STATUTE INVOLVED

The Travel Act, 18 U.S.C. §1952:

> **Interstate and foreign travel or transportation in aid of racketeering enterprises**
>
> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United

States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

STATEMENT OF THE CASE

Giovanni and Mario Lignarolo, brothers, are businessmen. During late 1979 and early 1980, their business activity included the purchase and sale of large amounts of currency, exchanging dollars and pesos in an effort to profit from the fluctuating exchange rates. The Lignarolos were completely indifferent as to who sold them the dollars and where the sellers obtained their currency.

In July of 1981, the Lignarolos learned that their business was considered illegal by the United States Government. They were indicted on July 31, 1981, and charged with conspiracy to violate and substantive violations of the Travel Act, 18 U.S.C. §1952(a)(1), by traveling interstate to distribute cash proceeds of marijuana activity. Following a jury trial, the Lignarolos were convicted, and on March 24, 1983, they received split sentences of probation and six months' confinement. Upon their appeal, the convictions were affirmed and rehearing was denied.

The charges against the Lignarolos arose from an F.B.I. investigation into the Continental Bank in Miami which had been receiving unusually large cash deposits to the accounts of Colombians. Believing the sources of the deposits to be drug-related, the F.B.I. created an entity

called CRV Associates which opened an account at Continental Bank in Miami and another at Citibank in New York City. Undercover agents made large cash deposits in Miami, and the funds were then wire-transferred among various banks to suggest CRV's ability to move money.

CRV's account was handled for Continental by Orlando Arrebola, a Continental Vice-President, who the F.B.I. believed was involved in "laundering" money.[1] In October 1979, one of the undercover F.B.I. agents told Arrebola that he could "collect" anywhere in the United States and asked Arrebola if he knew of anyone encountering money-moving problems in New York. Arrebola said he knew many such people and offered to direct them to CRV since Arrebola "did not have time."

In November 1979, undercover F.B.I. agents sought Arrebola's advice: they wished to find Colombian drug suppliers for some New York Italians, ostensibly so that the Colombians would then use CRV's services in transferring the resulting currency. Arrebola said he could arrange a meeting between the Italians and his partner who brought "merchandise" from Colombia to the United States and sent currency in the opposite direction. Two days later, at the agents' request, Arrebola arranged a meeting for December 3 in his office.

At the meeting, Luis Vasquez was introduced as Arrebola's partner. The agents told Vasquez that they were interested in locating a drug source for their Italian friends in New York, and that CRV would deal only in money, not drugs. Vasquez told the agents that he moved drug money throughout the United States and into Colom-

[1] Arrebola was indicted and tried with the Lignarolos; he was acquitted on all charges.

bia; however, he said, he also had nothing to do with the sales of the drugs themselves.[2] The agents offered Vasquez the use of the CRV New York bank account, saying that Vasquez's money could be deposited in New York and wire transferred to Miami.

On December 12, the same parties met again, this time joined by Moises Musa Assaf, Vasquez's associate.[3] Again there was discussion of money moving from New York City; again the agents offered the use of CRV's New York bank account.

Finally, on December 19, 1979, Mario Lignarolo was introduced by Assaf to one of the undercover F.B.I. agents in the lobby of Citibank in New York. Lignarolo had $350,000 in cash which was deposited in the CRV account. After depositing the money, Lignarolo, the undercover agent and Assaf went to lunch. According to the agent,[4] Lignarolo said there would be several more deposits because the total amount of the marijuana shipment was going to be $2.3 million. Mario also said that there was another shipment en route to New York, but that it would be another deal. Two days later, Assaf went to CRV's office in Miami to pick up a check for the money deposited in New York; he had the check made out to Promotora del Caribe, a Colombian business firm.

This process was repeated generally on four other occasions between December 22, 1979 and March 17, 1980.

---

[2] The trial court instructed the jury that none of these conversations dealing with putting together drug deals was to be considered as evidence against the Lignarolos.

[3] Vasquez and Assaf were indicted but never arrested.

[4] This conversation, unlike many others in this case, was not recorded.

Mario or Giovanni Lignarolo would travel to New York, meet an undercover F.B.I. agent, provide the agent with cash for deposit in the CRV New York Citibank account, and provide the agent with directions to wire the money after deposit to the following accounts: Promotora del Caribe in Miami ($500,000 on December 22, 1979); Victor M. Sasson in Miami (approximately $900,000 on January 7, 1980); Sasson's account in New York (approximately $600,000 on March 6, 1980); and Financiara del Norte in Miami (approximately $825,000 on March 17, 1980).

The five separate transactions were alleged as individual substantive offenses as well as overt acts committed in furtherance of the charged conspiracy.

At no time did the government allege or seek to prove the Lignarolos' participation in any drug conspiracy or "unlawful activity" as defined in 18 U.S.C. §1952(b). Further, at no time did the government allege or seek to prove that the funds handled by the Lignarolos were distributed to members of the business enterprise constituting the "unlawful activity" defined in 18 U.S.C. §1952(b).

REASONS FOR GRANTING THE WRIT

I.

BY EXTENDING THE TRAVEL ACT'S REACH FAR BEYOND ANYTHING CONGRESS INTENDED, THE ELEVENTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT, AND IT HAS RENDERED A DECISION IN CONFLICT WITH DECISIONS OF OTHER FEDERAL COURTS OF APPEALS.

During the trial of this case, the district judge repeatedly noted that the *Lignarolo* proceedings would "break new ground" in Travel Act prosecutions. In a sense, he was right—the opinion of the Eleventh Circuit has taken the Travel Act to areas of criminal law never before entered.[5] The brothers Lignarolo, whom the government never identified as anything other than money merchants, were convicted of Travel Act violations for their contact with a business enterprise in which they had absolutely no interest.

It is imperative that this point's significance be understood: the government has never claimed that the Lignarolos were part of the marijuana organization whose cash funds the Lignarolos handled. They were not alleged to have been principals, aiders and abettors, or conspirators in any marijuana distribution network. Their involvement was limited strictly to transferring cash from one person or

---

[5] At least, not entered in our country's history. A close analogy is provided by the "no contact" laws enacted in Europe during the bubonic plague. These laws imposed criminal sanctions against those coming into contact with plague carriers, much as the Eleventh Circuit's interpretation of the Travel Act does for those providing goods or services to illegal business enterprises.

entity to another person or entity, usually in different cities, through the mechanism of cash deposits in one bank and wire transfers to another.

The Lignarolos had no drug involvement—yet, they suffered a series of Travel Act convictions for involvement in an illegal drug enterprise. This unwarranted (and unprecedented) expansion of a frequently used federal statute requires this Court's attention.

A. Congress Did Not Intend To Encompass Legitimate Suppliers Of Services Within The Reach Of The Travel Act; Instead, Only Those Businesspeople With A Stake In The Underlying Unlawful Enterprise Were Travel Act Targets.

When Congress enacted the Travel Act in 1961, it expressed no intention to brand with criminality all who encountered illegal activity. Unlike most other criminal legislation aimed at organized crime, the Travel Act does not have a liberal construction clause; it has not been treated by the lower courts as expansive criminal legislation. *Compare with* RICO, 18 U.S.C. §§1961-68 and its invitation to expansion, Pub. L. No. 91-452, Tit. IX, 84 Stat. 941, 947 (1970). To the contrary, the Travel Act's legislative history has caused numerous courts to interpret its statutory reach more narrowly than the broad language might permit. Project, *Annual Survey Of White Collar Crime—Travel Act*, 19 Am. Crim. L. Rev. 173, 340 (1981), and cases cited.

This legislative history consists, in part, of repeated assurances by those who sought the Act's passage that it would be limited in application to members of a criminal enterprise. The Assistant Attorney General in charge of the Justice Department's Criminal Division, Herbert J. Miller, informed the general counsel to the House Com-

mittee on the Judiciary, William Foley, that it was "absolutely" a condition precedent for any violation of the Travel Act that the defendant be engaged in the unlawful business enterprise:

> MR. FOLEY: At that point, may I interrupt you to clarify this. Would you say that as a condition precedent, for any violation of this statute, the individual concerned *must be engaged in a business enterprise which is illegal* in these four categories that you are talking about?
>
> MR. MILLER: Absolutely.

Legislation Relating To Organized Crime: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary, 87th Cong., 1st Sess. 339 (1961) (emphasis added).[6]

This same restriction was noted by the Senate Judiciary Committee which relied upon Attorney General Kennedy's representation to the Senate:

> The bill, S. 1653, was introduced by the chairman of the committee, Senator James O. Eastlund, on April 18, 1961, on the recommendation of the Attorney General, Robert F. Kennedy, as a part of the Attorney General's legislative program to combat organized crime and racketeering.
>
> The Attorney General testified before the committee in support of the bill, S. 1653, on June 6, 1961, and commented:
>
> > * * * We are seeking to take effective action against the racketeer who conducts an unlawful

---

[6] This Congressional perception, ratified by the Justice Department, was limited to those four areas in which "business enterprise" involvement was mandated: gambling, narcotics, liquor and prostitution. No such membership would be necessary if the underlying activity were extortion, bribery or arson. *See* 18 U.S.C. §1952(b)(2); *cf. United States v. Nardello*, 393 U.S. 286 (1969).

> business but lives far away from the scene in comfort and safety, as well as against other hoodlums.
>
> Let me say from the outset that we do not seek or intend to impede the travel of anyone *except persons engaged in illegal businesses* as spelled out in the bill. . . . Under this bill we would have to show a business enterprise which was unlawful under the laws of the State; that one of the participants traveled thereto in interstate commerce with intent to actually further that business.
>
> * * *

S. Rep. No. 655, 87th Cong., 1st Sess. 2-3 (1961) (emphasis added).

Thus, both houses of Congress believed that the Travel Act would be applied only against members of illegal business enterprises.

Presented with a case in which the alleged violators were clearly *not* members of the illegal business enterprise, the Eleventh Circuit sought to vitiate the Act's legislative history with respect to a §1952(a)(1) (distribution of proceeds) case. Seizing upon a brief phrase in Attorney General Kennedy's testimony before a subcommittee of the House Committee on the Judiciary, the Court of Appeals noted that the Attorney General had targeted the "courier who carries the funds across state lines," citing *Legislation Relating To Organized Crime: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 87th Cong., 1st Sess. 22 (1961). 770 F.2d at 978, App. 12. The court then equated Mr. Kennedy's "courier" to the money merchant activity of the Lignarolos. *Id.*

But what the Eleventh Circuit failed to consider in its analysis of legislative history was that the Attorney Gen-

eral defined the "courier" as the "bagman," a person whose function and organizational role are materially different from the mere messenger:

> The layoff men, who comprise the gambling syndicate, must settle their accounts periodically, for they do not trust each other any more than they trust the average bettor. They settle the accounts by having a "bagman" travel throughout the country picking up and depositing funds to balance the books. He receives reports of balances due from each of the layoff men. He acts as a clearinghouse and accountant for the group—settling the accounts in accordance with good accounting practice—in much the same manner that our banking clearinghouses operate.

Legislation Relating to Organized Crime, supra, at 22. The "clearinghouse and accountant for the group" is hardly a fair equivalent to either Lignarolo, given their demonstrable indifference to the source of their funds. The courier/bagman is a participant in the enterprise's affairs; the money merchant is a businessperson who, dealing in a lawful commodity, is impervious to the enterprise in all aspects save one: its need for his services.

Congress intended no mark of Cain for businesspeople encountering unlawful enterprises. It sought, instead, to create a sharply pointed weapon designed for the Attorney General's war against organized crime. *See generally, Rewis v. United States*, 401 U.S. 808 (1971); *see also Perrin v. United States*, 444 U.S. 37, 41 (1979). The Eleventh Circuit has substituted a broadsword for the congressional stiletto. Certiorari will allow this Court to decide whose view of the Travel Act's reach should be honored: the Eleventh Circuit's or Congress'.

B. In Applying The Travel Act To A Merchant Uninvolved In The Illegal Business Enterprise, The Eleventh Circuit Has Created A Conflict In The Circuits.

The parties' briefs before the Eleventh Circuit made much of the Ninth Circuit decision in *United States v. Gibson Specialty Company*, 507 F.2d 446 (9th Cir. 1974). This emphasis might be expected, for *Gibson Specialty* presents an analysis of the Travel Act which differs markedly from that employed by the trial court below. But of more significance to this certiorari application, *Gibson Specialty* is squarely at odds with *Lignarolo*. The simultaneous existence of these two decisions presents a conflict which this Court should resolve.

In *Gibson Specialty*, Illinois- and Missouri-based manufacturers and distributors of gambling equipment were convicted of Travel Act violations for selling their wares to residents of Montana, a state which criminalized gambling. It was assumed by the *Gibson Specialty* trial and appellate courts that the defendants knew they were vending goods to violators of state law. The Ninth Circuit affirmed the trial court's dismissal of the indictments (actually an acquittal since the dismissals were based upon stipulated facts), and its analysis of §1952 liability presents a sharp contrast to that employed in this case. The Ninth Circuit outlined the government's burden in the following terms:

> In order for a prosecutor to show that a manufacturer has violated the Travel Act by selling [gambling equipment] under circumstances similar to those involved here, the prosecutor must show that the manufacturer *in some significant manner associated himself with the purchasers' criminal venture for the purpose of its advancement.* Were we not to define intent in the Travel Act in this manner, the Act would be plagued by the very expansiveness which Con-

> gress sought to rule out by inclusion of an express *mens rea* requirement.

507 F.2d at 449 (emphasis added).

In language which amounts to sheer prophecy, the court noted a major reason for its ruling:

> [W]here the kind of assistance rendered held to constitute a violation of the Travel Act, a possible precedent would have been established for indicting lessors, servicemen, and vendors of all kinds, who deal interstate with certain types of offenders. Bringing the resources of the federal police power to bear upon acts of the sort involved in the instant case cannot have been the purpose of Congress in proscribing the acts enumerated within the statute.[9]

---

[9] Our research has revealed no cases where a remote seller of goods or services, *uninvolved in an actual gambling operation*, has been successfully tried and convicted under the Travel Act.

507 F.2d at 451 (emphasis added). Petitioners, as "vendors of all kinds who deal interstate with certain types of [drug] offenders" did not violate the Travel Act under the *Gibson Specialty* rationale.

The court below sought to maximize the supposed distinction between a sub (1) violation of §1952 and a sub (3) violation. *Gibson Specialty*, the court noted, was a sub (3) facilitation case, while Lignarolo was a sub (1) distribution charge. The Eleventh Circuit's analysis ended with this statement. The mere existence of different statutory subsections does not, of course, demonstrate that the distinction has significance. In fact, the syntax of §1952(a) makes it clear that distributing the proceeds of an unlawful activity is only one means of promoting or carry-

ing on an unlawful activity.[7] If one means of promotion requires membership in the underlying enterprise as *Gibson Specialty* has held, there can be no principled basis for deleting the membership requirement from another means of promotion. Nothing in the logic or legislative history of the statute supports this distinction.

The conflict is real: the Lignarolos would be innocent merchants in the Ninth Circuit; they are felons in the Eleventh. Certiorari will allow application of one federal standard to all Travel Act prosecutions.

II.

THE ELEVENTH CIRCUIT'S FAILURE TO REQUIRE PROOF THAT THE DISTRIBUTION OF THE UNLAWFUL ACTIVITY'S PROCEEDS WAS TO A MEMBER OF THE ILLEGAL BUSINESS ENTERPRISE CONFLICTS WITH THE HOLDING OF THE DISTRICT OF COLUMBIA CIRCUIT.

On their appeal, petitioners asserted that the trial court had not required the government to prove that illegal drug proceeds were distributed to persons involved in the unlawful enterprise. They argued that the persons receiving the proceeds must be entitled to them for reasons other than the lawful transfer of goods or services, and specifically, as a consequence of the recipient's membership in the unlawful enterprise. They asserted that since the government had failed to prove entitlement based on enterprise membership, reversal of the convictions was required.

---

[7] Section 1952(a) prohibits (1) distributing proceeds of an unlawful activity; or (2) committing a crime of violence to further an unlawful activity; or (3) *otherwise* promoting, etc., an unlawful activity. Presumably, Congress used the word "otherwise" in its ordinary fashion.

Petitioners' argument was derived from the holding of the United States Court of Appeals for the District of Columbia Circuit in *United States v. Lightfoot*, 506 F.2d 238 (D.C. Cir. 1974). Lightfoot had used money from his prostitution enterprise in the District of Columbia to purchase an automobile from a car dealer in Maryland. The government indicted under §1952(a)(1) on the theory that Lightfoot's purchase of the automobile constituted distributing the proceeds of an unlawful activity. In rejecting this interpretation of the Travel Act, the *Lightfoot* court employed language applicable to the Lignarolos:

> We believe that, particularly in the context of this case, the word "distribute" carries a connotation of distribution of illegal proceeds to persons in organized crime conspiracies. Certainly the person receiving them must be entitled to them for reasons other than normal and otherwise lawful purchase and sale of goods at market prices.

506 F.2d at 242.

Despite petitioners' substantial reliance on *Lightfoot*, it was not mentioned in the Eleventh Circuit decision. That court found unnecessary a definition of "distribute" which would limit the term's application to circulation of proceeds within the enterprise, and it held the evidence sufficient to warrant an inference of distribution to other members of the enterprise. 770 F.2d 980-81, App. 16-18.

This resolution of the distribution issue creates a conflict with *Lightfoot*, precisely because of the absence of proof that any of the accounts which were recipients of the Lignarolos' Citibank wire transfers were associated with the drug enterprise. The Eleventh Circuit was content to brush the question aside with two sentences: "The evidence presented at trial showed that at least one of these accounts, Promotora del Caribe, belonged to a Colombian

business. A reasonable jury, in light of the appellants' activity, could infer that these accounts were owned by other members of the business enterprise." 770 F.2d at 980, App. 17.[8]

Petitioners are confident that the government, if requested to respond to this point of the petition, will concede that the prosecution made no effort whatsoever to connect the recipient accounts with the drug enterprise. In the absence of such proof, this case should have been controlled by *Lightfoot.*

Either the Eleventh Circuit is correct in *Lignarolo* or the District of Columbia Circuit is correct in *Lightfoot.* This Court should resolve the conflict.

[8] Surely, Colombians have not so cornered the illegal drug market that the fact of Colombian ancestry is a sufficient basis upon which to find membership in a drug enterprise. Yet, this is the result of the Eleventh Circuit holding on the facts of this case.

CONCLUSION

This prosecution has amended the Travel Act to a scope far beyond that contemplated by Congress; the Eleventh Circuit, in affirming the convictions, has sanctioned the exercise of executive activism. If the Travel Act means what the Eleventh Circuit has held and not what the Ninth and District of Columbia Circuits have decided, nor what Congress has written, it is the responsibility of this Court to notify the citizenry. This can be done through the grant of certiorari.

Respectfully submitted,

STEPHEN M. GLYNN
SHELLOW, SHELLOW & GLYNN, S.C.
222 East Mason Street
Milwaukee, Wisconsin 53202
(412) 271-8535

Attorney for Petitioners

APPENDIX 1

UNITED STATES of America,
Plaintiff-Appellee,

v.

Giovanni LIGNAROLO and Mario Lignarolo, Defendants-Appellants.

No. 83-5243.

United States Court of Appeals,
Eleventh Circuit.

Sept. 10, 1985.

Appeal from the United States District Court for the Southern District of Florida.

Before RONEY and TJOFLAT, Circuit Judges, and BROWN,* Senior Circuit Judge.

TJOFLAT, Circuit Judge:

This appeal presents the question of whether one can be convicted under the Travel Act, 18 U.S.C. § 1952(a)(1) (1982), by traveling from one state to another to "launder" the cash receipts of drug traffickers. We answer the question in the affirmative.

---

* Honorable John R. Brown, U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

I.

A.

In 1979, the Federal Bureau of Investigation (FBI) discovered that the cash deposits at the Continental Bank in Miami, Florida were unusually large. Many of the deposits were being made to the accounts of persons or entities living or located in South America, principally Colombia, and the FBI suspected that some of the money originated from drug transactions. To identify the drug traffickers and their money launderers, the bureau set up a "sting" operation in Miami, called Operation Bancoshares.

The FBI's intelligence information indicated that Orlando Arrebola, a Continental Bank vice-president, was involved in the laundering of drug money. On September 5, 1979, Agent Uriarte contacted Arrebola at the bank for the stated purpose of opening a business account at the bank. The account was to be in the name of CRV Associates, a corporation set up by the FBI. Agent Uriarte told Arrebola that he needed someone he could trust to handle the account and that he had been informed that Arrebola was the man to see. Arrebola agreed to handle the account.

Once the bank account was opened, FBI agents, working undercover, proceeded to build credibility as money launderers. Among other things, they had CRV transfer by wire $500,000 furnished by the U.S. Department of the Treasury from Continental Bank in Miami to Citibank in New York City, where CRV has another account, and back to Continental, several times, to create the appearance that CRV was moving large amounts of money. In addition, FBI agents made frequent cash deposits of over $100,000 to CRV's Continental account; the agents would bring the money in attache cases and give extravagant tips to the bank employees who helped in counting it.

During a conversation on October 12, 1979, Agent Uriarte told Arrebola that he could "collect" anywhere in the country and asked Arrebola if he knew of anyone who

had problems in New York. Arrebola acknowledged that he knew someone who had $2 million in New York but had no way to send it to Miami,[1] and that he, Arrebola, "did not have time." Arrebola offered to put this person in touch with Agent Uriarte. He added that he knew a lot of other people in New York with the same problem and that now he could refer them to CRV.

On November 28, 1979, Agents Franco and Avakian,[2] CRV operatives working under the assumed names of Jose Antonia Fernandez and Charles Rana, attempted to get advice from Arrebola on how they could get some Italian people in New York Colombian drug connections who could use CRV to "move" their drug profits. Arrebola said that he could solve the agents' problem; he had a partner who was sending "merchandise" from Colombia to the United States and bringing money back to Colombia. He described his partner as a thirty-year-old Colombian who owned five money exchange houses in Colombia and who was capable of moving two or three million dollars a day. Arrebola said that he would talk to his partner and that a meeting between his partner and the Italians could be arranged.

Two days later, Agent Franco telephoned Arrebola, told him that his man from New York was in Miami, and asked if a meeting could be arranged with Arrebola's partner. The meeting took place on December 3, at CRV's office. Those present were Arrebola, his partner, Luis Fernandez Vasquez, and Agents Avakian and Franco. During the meeting, Agent Franco reiterated that he knew a group of people in New York who needed a supplier of cocaine and marijuana, but that CRV was interested only in

---

[1] Arrebola told Agent Uriarte that at least half of the banks in New York City refused to accept large "cash" deposits; thus, it was difficult to transfer drug money through banking channels from New York City to Miami.

[2] Agent Uriarte left the Bancoshares operation in October 1979 and thus was not involved in the money laundering that formed the basis for the indictment in this case.

"moving" drug money; it would not deal with the drugs themselves. Vasquez explained that, although he personally did not sell cocaine or marijuana, he "moved" drug money all over the United States and to Colombia. Vasquez did not have a bank in New York that could be trusted, as he had in Miami. The agents offered Vasquez the use of CRV's corporate account at Citibank in New York City, stating that his money could be deposited there and transferred by wire to Miami. On December 12, the agents, Arrebola, Vasquez and Moises Musa Assaf, an associate of Vasquez, assembled at Arrebola's office. Agent Avakian, Assaf, and Vasquez discussed the movement of money from New York City. Agent Avakian again offered the use of CRV's Citibank account, and Vasquez agreed to contact him if a New York deal, which Vasquez expected to total $4 million, came through.

On December 19, Agent Franco flew to New York City and met Moises Assaf in the lobby of Citibank. Assaf introduced Agent Franco to appellant Mario Lignarolo, who was carrying a large brown shoulder bag containing $350,000 in cash. Agent Franco deposited the money in CRV's account. As they were leaving the bank, Lignarolo asked if the bank woud be open on Saturday because he would have $1.5 million to deposit that day. Later, Assaf apologized to Agent Franco for the small amount of the deposit, explaining that he had been told that it would be $2 million. Lignarolo then told Franco that there would be several more deposits because the entire proceeds from the marijuana shipment would be $2.6 million. He also said that another marijuana shipment was on its way from Colombia to New York, but that that would be another deal. On December 21, Assaf came to CRV's Miami office to pick up a check for the money he and Mario Lignarolo had given to Agent Franco to deposit in New York City. Assaf requested that the check be made out to Promotora del Caribe, a Colombia business firm.[3]

---

[3] Agent Franco made the check out for $345,095. The difference of $4,905 represented CRV's fees for transferring the money: one percent for over $500,000, and two percent for under $500,000.

On December 22, Agents Franco and Avakian again flew to New York City. Assaf met them at the airport and drove them to the Waldorf Astoria where they joined Mario Lignarolo. Lignarolo went up to his room, and the agents and Assaf joined him shortly thereafter. On the bed was a tan leather suitcase containing approximately $700,000. Soon two other people came to the room; they were introduced to the agents as "Dominic"[4] and "Luis Quetero." Everyone there except Quetero counted the money from the suitcase. As it was being counted, Lignarolo put $15,000 in his pocket and gave Quetero $1,000. Assaf told Agent Franco that this "load" was Quetero's. Dominic said that the total amount of the "load" was $2.3 million and that the next payment would be made on either January 2 or 3. Mario Lignarolo then gave Agent Franco the remainder of the money, $684,000, which Franco deposited in CRV's Citibank account. The money was later transferred by wire to CRV's account at the Continental Bank in Miami.

On December 26, Arrebola instructed Agent Franco that CRV should make out a check for $500,000 to Promotora del Caribe. The next day, Assaf went to CRV's office to collect the balance of the $684,000 deposit (less CRV's fee) that had been wired from New York City. Assaf told the agents there that another pick-up of $1 million would take place in New York City on January 2 or 3.

On January 3, 1980, Agents Franco and Avakian met with Vasquez, Assaf, and appellant Giovanni Lignarolo, Mario's brother, at CRV's Miami office. During a discussion of ways to transfer money, a business in which Giovanni professed to have a great deal of expertise, Agent Avakian asked why more money was always promised than was actually delivered in New York. Giovanni answered, "I think they are still selling the stuff . . . you know and they haven't been able to . . . sell everything."

---

[4] Although it was not made clear at trial, Dominic often used the name Mel and may also have been known as Pete or Pedro.

Agents Franco and Avakian traveled to New York City again, on January 7, and met Giovanni Lignarolo and Assaf in the lobby of the Waldorf Astoria. The four men immediately went up to a room in the hotel. Lignarolo and Assaf then departed, to an adjoining room and returned with two suitcases containing approximately $1 million in cash. Assaf told the agents that the money, with the exception of $100,000 that he and Giovanni Lignarolo would carry to Miami to pay some people, was to be deposited in CRV's Citibank account and wired to the Victor M. Sasson account at the Flagship Bank in Miami. The agents made the deposit on January 24, and Assaf told Agent Franco that the money had come from the sale of a boatload of marijuana and that he had taken care of Arrebola.

On March 4, Vasquez and Assaf met with the agents at CRV's office and told them that on the next deal both Giovanni Lignarolo and Assaf would go to New York. On March 6, the agents met the two men at the Waldorf Astoria, and, after the four of them together counted out $614,000 in cash, the agents deposited the money in CRV's Citibank account. Giovanni Lignarolo told the agents that he expected two more deliveries, approximating $1 million, later that evening. The following morning, the agents again met with Lignarolo and Assaf who instructed them to wire the money deposited the previous day to the Victor Sasson account at the Republic National Bank in New York City. Later in the day, Lignarolo told the agents that the additional money he expected had not been delivered. He made several phone calls and spoke with a man named Pete or Pedro,[5] purportedly a member of an Italian family that was well connected with the marijuana business in the New York City area. Lignarolo told the agents that the money would be delivered on March 16.

---

[5] *See supra* note 4.

On March 17, Agents Franco and Avakian met Giovanni Lignarolo, Assaf, and two Italians, Dominic and Anthony, at the Hilton Hotel in New York City. The six men went up to a hotel room and counted money. While they were counting, Dominic told Agent Franco that he owned a shrimp boat and an island hopper, used the boats to smuggle large quantities of marijuana, and that the money they were counting came from marijuana. The money totalled $934,000, $827,000 of which was deposited in CRV's Citibank account. Of the $107,000 remaining, Giovanni took $100,000 and Assaf $7,000. The next day Assaf instructed the agents to wire the deposited funds to the Financiara del Norte account at Continental Bank in Miami.

B.

On July 31, 1981, the two appellants, Mario and Giovanni Lignarolo, Arrebola, Vasquez, and Assaf were indicted in the Southern District of Fiorida. All were charged under 18 U.S.C. § 371 (1982) with conspiring to violate the Travel Act, 18 U.S.C. § 1952(a)(1) (1982), by traveling in interstate commerce to distribute cash proceeds of marijuana trafficking. One or more of the defendants was charged in each of seven additional counts with having committed a substantive Travel Act offense. The alleged substantive offenses included the five laundering transactions, involving some $3.5 million in funds, we have described, *supra*, which took place over a period of less than six months and began in New York City when Agents Franco and Avakian made deposits to CRV's Citibank account. These transactions were also alleged as overt acts committed by one or more of the defendants in furtherance of the charged conspiracy. The case against the appellants and Arrebola was severed, and they were tried together. Appellants were convicted as charged; Arrebola was acquitted.

In this appeal, appellants challenge the sufficiency of the evidence and the trial court's instructions on the elements

of both the conspiracy and substantive offenses.[6] We conclude that the evidence was fully adequate to convict appellants on each count and that the court did not err in instructing the jury.

II.

A.

The Travel Act makes it a crime to travel in interstate commerce with the intent to "(1) distribute the proceeds of any unlawful activity; or . . . (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity . . . *and* thereafter [to] perform[ ] or attempt[ ] to perform any of [such] acts. . . ." 18 U.S.C. § 1952(a)(1), (3) (1982) (emphasis added). An "unlawful activity," within the meaning of the Act, includes "any business enterprise involving . . . controlled substances," 18 U.S.C. § 1952(b) (1982), such as marijuana.[7] Appellants and their co-indictees

---

[6] Appellants also claim that Hispanics were underrepresented on the grand jury that indicted them. They raised this issue in a pretrial motion, "adopting" the record made on a challenge to the grand jury in *United States v. Cabrera-Sarmiento*, 533 F.Supp. 799 (S.D.Fla.1982). Appellants failed to present the court with any portion of this "adopted" record, or any other evidence, to support their claim of underrepresentation. The effect of such failure is that we have no record, in the form of testimony, documentary evidence, or stipulations, to review with respect to this issue; all we have is appellants' naked allegation that Hispanics were unlawfully underrepresented on the grand jury. Hence, appellants' claim must fail. *Cf. United States v. Garcia*, 721 F.2d 721, 723-724 (11th Cir.1983) (defense counsel failed to enter the record or the indictments in a prior case into evidence in a trial involving double jeopardy claim and therefore fell short of establishing a prima facie case). We do note, in passing, that the merits of a claim identical to the one appellants raised was rejected in *Cabrera-Sarmiento*, *supra*, and, on appeal, in this court in *United States v. Esle*, 743 F.2d 1465 (11th Cir.1984).

[7] Marijuana is a schedule I controlled substance. 21 U.S.C. § 812 (1982).

were charged with conspiring to violate, and violating, section 1952(a)(1) by traveling from Miami to New York City to distribute, and thereafter distributing, the cash proceeds of marijuana transactions.

Section 1952(a)(1) requires that the defendant travel in interstate commerce, with the intent to distribute the proceeds of an unlawful activity, and that he knowingly made such distribution. In the case at hand, therefore, the Government had to prove, with respect to each of the substantive counts, that the defendant traveled from Miami to New York City for the express purpose of collecting proceeds generated by substantial marijuana trafficking, that he collected currency of the United States which he knew constituted such proceeds, and that he distributed that currency by causing the undercover agents to deposit it in CRV's Citibank account and then to wire it to various bank accounts in New York City and Miami. On the facts recited in Part I.A., *supra*, which we portrayed in the light most favorable to the Government, *see United States v. Carter*, 760 F.2d 1568, 1582 (11th Cir. 1985), we conclude that a reasonable jury could find appellants guilty beyond a reasonable doubt of the section 1952(a)(1) charges lodged against them.

We also conclude that the trial judge properly charged the jury on these substantive counts. The court instructed the jury that the Government had to prove that appellants traveled from Miami to New York City "in interstate commerce," that they went there intending to distribute the proceeds of a business enterprise trafficking marijuana, and that they thereafter distributed such proceeds with knowledge that they were derived from the enterprise's sale of marijuana. In sum, the judge fully instructed the jury on the applicable elements of section 1952(a)(1).

Appellants admit that the court's jury instructions on the elements of a section 1952(a)(1) offense tracked the literal language of the statute, but they argue that case law interpreting the statute has created an additional ele-

ment: the Government must show that the defendant, in distributing the proceeds of an unlawful activity, intended to facilitate that activity. Appellants contend that the Government's proof failed to establish this additional element; hence, they are entitled to an acquittal. Appellants contend, alternatively, that they are entitled to a new trial because the court failed to include the element in its charge to the jury.

Appellants cite *United States v. Gibson Specialty Co.*, 507 F.2d 446 (9th Cir.1974) for their proposition. *Gibson* involved a prosecution under section 1952(a)(3) of the Travel Act. The district court held that the defendants' travel to Montana to sell gaming paraphernalia to illicit gambling enterprises could not violate section 1952(a)(3), even if the defendants knew that they were selling the paraphernalia to violators of state law. The court, therefore, dismissed the indictment for failure to state an offense. The Ninth Circuit, in rejecting the Government's appeal, agreed. It held that the defendants' knowledge of the illegal use their buyers would make of the gaming materials, standing alone, could not render their conduct criminal. To make out a section 1952(a)(3) offense, on the facts presented, the prosecution had to

> show that the manufacturer in some significant manner associated himself with the purchaser's criminal venture for the purpose of its advancement. *Were we not to define intent in the travel act in this manner, the act would be plagued by the very overexpansiveness which Congress sought to rule out by inclusion of an express mens rea requirement.*

Id. at 449 (emphasis added). The *Gibson* court was concerned about an interpretation of the Travel Act that would impose liability on legitimate businesses supplying merchandise or services to unlawful business enterprises. In the court's view, Congress could not have intended that a supplier be prosecuted merely because he had knowledge of the illicit nature of his customers' business ac-

tivities; to be criminally responsible, he had to associate himself somehow with these activities.[8]

As we have noted, *Gibson* was a section 1952(a)(3) prosecution, in which the Government had to prove that the defendants traveled interstate to "otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity. . . ." The Government did not have such burden of proof here, because appellants were charged under section 1952(a)(1). All the Government had to establish was that appellants traveled interstate for the purpose of distributing the proceeds of marijuana transactions and that they knowingly made such distribution. In a section 1952(a)(1) case like this one, it is enough that the Government prove, with respect to this latter element, that the defendant, at the time he distributed the proceeds, knew that they were derived from unlawful activity as defined in section 1952(b).

The Travel Act was enacted to control the flow of illegal profits and to combat pernicious criminal activities that are multi-jurisdictional. *See* H.R.Rep. No. 966, 87th Cong., 1st Sess. 2, *reprinted in* 1961 U.S.Code Cong. & Ad. News 2664, 2665. It was "primarily designed to stem the 'clandestine flow of profits' " from certain unlawful business activities. *United States v. Nardello*, 393 U.S. 286, 292, 89 S.Ct. 534, 538, 21 L.Ed.2d 487 (1969) (citation omitted). A clear target of the legislation is the "bagman," the individual who distributes the proceeds of unlawful activities. In his testimony before a House Subcommittee on the Judiciary, Attorney General Robert F. Kennedy explained that, if the Travel Act were enacted, the gov-

---

[8] The court in *Gibson*, however, gave no hint as to precisely what "association" the prosecution would have to establish to obtain a section 1952(a)(3) conviction. For example, would the prosecutor be required to show that the defendant was a principal of the business enterprise or a conspirator with those who formed and/or operated the enterprise at the time he sold the gaming paraphernalia?

ernment would be able "to prosecute the courier who carries the funds across state lines and in conjunction with the aiding and abetting statute [would] be able to prosecute the person who caused the courier to travel—the kingpin." *Legislation Relating to Organized Crime: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 87th Cong., 1st Sess. 22 (1961). We hold that, when a person willfully distributes proceeds that he knows were derived from an "unlawful activity," as defined in section 1952(b), he subjects himself to prosecution under section 1952(a)(1).[9] Moreover, if, in distributing such proceeds, such person intends to and does "facilitate the promotion, management, establishment, or carrying on" of the illegal business enterprise, he may have committed

---

[9] Appellants were also charged and convicted of conspiring to violate 18 U.S.C. 1952 (1982) in violation of 18 U.S.C. § 371 (1982). In order to sustain a conviction for conspiracy, the government must establish beyond a reasonable doubt that: (1) a conspiracy existed; (2) the defendant knew of the conspiracy; and (3) the defendant voluntarily participated in the conspiracy. *United States v. Lippner*, 676 F.2d 456, 466 (11th Cir.1982); *United States v. Garcia*, 672 F.2d 1349, 1369 (11th Cir.1982). Evidence of an overt act committed by one of the conspirators in furtherance of the conspiracy is also required. 18 U.S.C. § 371 (1982); *see also United States v. Tombrello*, 666 F.2d 485, 490 (11th Cir.), *cert. denied*, 456 U.S. 994, 102 S.Ct. 2279, 73 L.Ed.2d 1291 (1982). The Government, however, need not present direct evidence of an agreement between the co-conspirators; the agreement may be inferred from concert of action. *United States v. Hartley*, 678 F.2d 961, 972 (11th Cir. 1982), *cert. denied*, 459 U.S. 1170, 103 S.Ct. 815, 74 L.Ed.2d 1014 and 459 U.S. 1183, 103 S.Ct. 834, 74 L.Ed.2d 1027 (1983). Participation in the conspiracy may be implied from a defendant's acts in furtherance of the purpose of the conspiracy. *U.S. v. Kopituk*, 690 F.2d 1289 at 1323 (11th Cir.1982).

Appellants' argument against their conspiracy convictions mirrors their assault on the substantive violations: that section 1952(a)(1) requires, in addition to knowledge that the funds distributed were illegally obtained, an intent to facilitate the unlawful activity of the business enterprise. We have rejected this argument as it applied to the section 1952 convictions and find it no more persuasive in the conspiracy context.

a section 1952(a)(3) offense as well.[10] What appellants would have us hold is that, in a section 1952(a)(1) prosecution, the Government must show that, at the time the defendant distributed the ill-gotten proceeds, he was a principal in the criminal enterprise, like a co-conspirator or an aider or abettor. We refuse to read this additional element into the statute.[11]

---

[10] It may be true, in a given case, that the laundering of money is an essential component of drug trafficking; as such, it facilitates the business. "Importers, wholesalers, purchasers of cutting materials, and persons who 'wash' money are all as necessary to the success of the venture as is the retailer. They can all be held to have agreed with one another in what has been called a 'chain' conspiracy." *United States v. Barnes*, 604 F.2d 121, 154-55 (2d Cir.1979), *cert. denied*, 446 U.S. 907, 100 S.Ct. 1833, 64 L.Ed.2d 260 (1980). Agreements to engage in actions that are integral to a drug venture prohibited by 21 U.S.C. § 841 (1982), such as laundering proceeds, violate 21 U.S.C. § 846 (1982) as they are conspiracies to aid and abet the distribution of controlled substances. *United States v. Orozco-Prada*, 732 F.2d 1076, 1080 (2d Cir.), *cert. denied*, ____ U.S. ____, 105 S.Ct. 154, 83 L.Ed.2d 92 and ____ U.S. ____, 105 S.Ct. 155, 83 L.Ed.2d 92 (1984).

[11] Appellants and *Amicus*, The National Association of Criminal Defense Lawyers, Inc. and The Florida Criminal Defense Attorneys Association, warn against applying the Travel Act to otherwise legitimate businessmen who merely happen to provide an unlawful enterprise with materials or services. Arguing that no businessman should be required to inquire into the background of his customer, they march before the court a parade of horribles which they prophesy such an application would create. We note, first, that not requiring a businessman to inquire into the activities of his customers says nothing as to his obligation once he happens to become aware of such activities. Second, our holding does not encompass businessmen who provide otherwise lawful services and products to an unlawful business enterprise. Our ruling is limited to individuals who knowingly distribute and launder proceeds of an unlawful activity as defined in section 1952(b), a result in harmony both with the practicalities of the business community and the legislative history of the Travel Act.

B.

Appellants contend that the trial court, in instructing the jury, failed to give it adequate guidance as to the definition of a "business enterprise" as the term is used in the statute. We note that the term is not defined in the statute itself.[12] Courts, however, have consistently construed the term to require a continuous course of conduct, rather than a sporadic, casual course of events. *United States v. Corbin*, 662 F.2d 1066, 1072 (4th Cir. 1981). *See also* H.R.Rep. No. 966, 87th Cong., 1st Sess. 3, *reprinted in* 1961 U.S.Code Cong. & Ad.News 2664, 2666. The trial judge, here, properly employed this standard when he instructed the jury that "[w]hat must be proved beyond a reasonable doubt is that the enterprise engaged in a continuous course of conduct or series of transactions other than casual or sporadic or isolated activity." Accordingly, we find no fault in the court's handling of the "business enterprise" issue.

Appellants contend that the evidence was insufficient to support a finding of the existence of a business enterprise involved in marijuana trafficking. The evidence presented at trial painted a picture not of isolated sales of small amounts of marijuana on street corners, but of a massive and excessively profitable marijuana operation. As mentioned in Part I.A., *supra*, Mario Lignarolo, upon

---

[12] The Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. §§ 1961-1968 (1982), defines "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (1982). Under this standard, it is sufficient for the government to show an amoeba-like infrastructure that controls a criminal network, "a myriopod criminal network, loosely connected. . . ." *United States v. Elliott*, 571 F.2d 880, 898 (5th Cir.), *cert. denied*, 439 U.S. 953, 99 S.Ct. 349, 58 L.Ed.2d 344 (1978). Although RICO, unlike the Travel Act, has a literal (*sic*) construction clause, Pub.L. No. 91-452, tit. IX, 84 Stat. 941, 947 (1970), it too was enacted to deal with organized crime and is therefore of some aid in interpreting similar language in section 1952.

giving the first $350,000 installment of drug proceeds to the agents, promised more deposits because the marijuana shipment would total $2.6 million. In less than six months, the agents deposited $3.5 million in CRV's account, hardly the profits of casual or sporadic activity:

> [I]t is difficult to characterize active participation in a massive operation to import and distribute marihuana as "casual involvement." The alleged conduct shows a profit or business purpose and the scope of the endeavor certainly warrants calling it an enterprise. The alleged activities constituted a "business enterprise" within any reasonable construction of that phrase and "where the language of the enactment is clear, and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended [by Congress]."

United States v. Bergdoll, 412 F.Supp. 1308, 1315 (D.Del. 1976) (quoting *United States v. Missouri Pacific R.R.*, 278 U.S. 269, 278, 49 S.Ct. 133, 136, 73 L.Ed. 322 (1929)). *See also United States v. Cozzetti*, 414 F.2d 344, 348 (9th Cir.1971) (indications that operation was intended to be profitable over a period of time was (*sic*) sufficient for section 1952(b) purposes, even if the operation terminated shortly after commencing.)

In addition, the activities of appellants and others did display temporal continuity. The $3.5 million was collected by the agents over six months and five trips to New York City. The jury was certainly entitled to infer that several installments were necessary because of the ongoing merchandising of the drugs in New York, particularly when this was all but stated by Giovanni Lignarolo in his January 3, 1980 meeting with the agents: "I think they are still selling the stuff . . . you know and they haven't been able to . . . sell everything." Appellants seem to believe that, if there was only one shipment of marijuana, a continuous business enterprise for the purposes of section 1952(b) could not be found. But clearly, the continuing dis-

tribution of marijuana and the generation over time of large profits satisfied the requirements of a business enterprise under section 1952(b). The verdict, then, would be supported even if the jury were presented with evidence of only one marijuana shipment. The testimony suggested, however, that multiple shipments of marijuana were contemplated. Agent Franco testified that, while counting out $827,000 on March 17, 1980, Dominic told him that the money they were counting came from the sale of marijuana and that he owned a shrimp boat and an island hopper which he used to import large quantities of marijuana. That appellants were aware of the multiple shipments was supported by Agent Franco's testimony that, on December 19, 1979, during his first meeting with Mario Lignarolo, Mario mentioned that, in addition to the marijuana shipment whose proceeds they were to obtain, another marijuana shipment was on its way from Colombia to New York, but that that would be another deal. This evidence was sufficient to sustain a finding that a business enterprise did exist for the purposes of section 1952(b).

Finally, appellants contend that the court failed to instruct the jury as to the meaning of "distribute;" they also suggest that there was insufficient evidence for the jury to find that such distribution occurred. The district judge instructed the jury that distribution was an element of a section 1952(a)(1) violation but declined to elaborate on the meaning of the term. The term distribute, however, is not endowed with such legal meaning as to require a judge to provide a definition to the jury. The term was employed in its everyday use. Such terms as "distribute," being within the common understanding of a juror, did not require trial court elaboration.[13] *United States*

[13] A district judge, for instance, is not required to give a special instruction defining "distribute" in prosecutions under Title 21 of the United States Code (distribution of narcotics or controlled substances). *United States v. Beasley*, 519 F.2d 233, 245 (5th Cir.1975), *vacated on other grounds*, 425 U.S. 956, 96 S.Ct. 1736, 48 L.Ed.2d 201 (1976).

v. Crockett, 506 F.2d 759, 762 (5th Cir.), *cert. denied*, 423 U.S. 824, 96 S.Ct. 37, 46 L.Ed.2d 40 (1975). *See also United States v. Pepe*, 747 F.2d 632, 675 n. 78 (11th Cir. 1984) ("It is well settled that a court need not define terms that are not unduly technical or ambiguous or that are within the common understanding of the jury.")

The jury had sufficient evidence to find that the appellants distributed the proceeds of an unlawful activity as defined in section 1952. The evidence at trial showed that money was eventually distributed, on appellants' instructions, to four different accounts: $1,037,442 went to the Promotora del Caribe account at the Continental Bank in Miami; $1 million was transferred to the Sasson account at the Flagship Bank in Miami; $614,000 was transferred to the Sasson account at the Republic Bank in New York; and $857,500 was transferred to the Financiera del Norte account at the Continental Bank in Miami. The evidence presented at trial showed that at least one of these accounts, Promotora del Caribe, belonged to a Colombian business. A reasonable jury, in light of the appellants' activity, could infer that these accounts were owned by other members of the business enterprise.[14] Even ignoring the transfer of money to these accounts, however, appellants distributed the proceeds of an unlawful activity when they gave the money to the agents to deposit into CRV's account; this was the first step in the transmission of the proceeds to other members of the unlawful activity. Knowl-

[14] The evidence presented at trial suggested other occasions where drug money might have been distributed to other members of the business enterprise. Agent Franco testified that at the January 7, 1980 meeting, in which approximately $1 million in cash was counted, Assaf told him that Mario and Giovanni Lignarolo were taking $100,000 back to Miami to pay people. Agent Franco also testified that on March 17, 1980, after counting out $827,000 to be deposited to CRV's account, Giovanni Lignarolo took $100,000 of the remaining money. This testimony further supports the theory that Giovanni Lignarolo distributed illegally obtained proceeds to other members of an unlawful business enterprise.

edgeable involvement in any link of such a chain of distribution triggers liability under section 1952(a)(1).[15]

Because we find that the evidence was sufficient to sustain appellants' convictions and that no reversible error occurred during the course of their trial, the judgments of the district court are

AFFIRMED.

---

[15] Appellants also contend that the district judge's instruction to the jury constructively amended the indictment. The indictment characterized the business enterprise as one involved in the distribution of marijuana. The district judge instructed the jury that the business enterprise must simply involve marijuana. A constructive amendment to the indictment occurs where the jury instructions "so modif[y] the elements of the offense charged that the defendant may have been convicted on a ground not alleged by the grand jury's indictment." *United States v. Ylda*, 653 F.2d 912, 914 (5th Cir.1981) (In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir.1981) (en banc), the Eleventh Circuit adopted the case law of the former Fifth Circuit handed down as of September 30, 1981.) In making this assessment, however, the court must distinguish between an expansive reading of the indictment that requires reversal and a variance that is harmless error. *Ylda*, 653 F.2d at 913-14. Appellants rely on *United States v. Salinas*, 601 F.2d 1279 (5th Cir.1979), *modified*, 610 F.2d 250 (5th Cir.1980). In *Salinas* the defendants were charged with violations of 18 U.S.C. § 656 (1982), an essential element of which is that defendant be "an officer, director, agent or employee of . . . [a] bank." The grand jury charged Salinas as a "director." The trial judge instructed the jury that the Government only had to prove that Salinas was "an officer, director, agent or employee of the bank." *Id.* at 1287. The reviewing court properly held the instruction a constructive amendment of the indictment because it altered an essential element of the crime charged. In the case before us, however, the method of involvement of a business enterprise in the illegal activity is not an essential element of proof; section 1952(b) requires only that the business enterprise be "involved in controlled substances." We find that, in this case, the deviation from the indictment concerning a non-essential element of proof did not prejudice the appellants.

APPENDIX 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-5243

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

GIOVANNI LIGNAROLO and
MARIO LIGNAROLO,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION FOR REHEARING

(Opinion September 10, 1985)
(November 14, 1985)

BEFORE: RONEY and TJOFLAT, Circuit Judges, BROWN,* Senior Circuit Judge.

PER CURIAM:

The Petition for Rehearing filed by appellants GIOVANNI LIGNAROLO and MARIO LIGNAROLO is denied.

* Honorable John R. Brown, U.S. Circuit Judge for the Fifth Circuit, sitting by designation.

Supreme Court, U.S.
FILED
APR 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1488

In the Supreme Court of the United States

OCTOBER TERM, 1985

GIOVANNI LIGNAROLO AND MARIO LIGNAROLO,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

SARA CRISCITELLI
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the evidence was sufficient to prove that petitioners violated the Travel Act, 18 U.S.C. 1952(a)(1).

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 2

Argument 3

Conclusion 7

TABLE OF AUTHORITIES

Cases:

United States v. *Gibson Specialty Co.*, 507 F.2d 446 ..... 3, 5, 6

United States v. *Lightfoot*, 506 F.2d 238 6

United States v. *Locke*, No. 83-1394 (Apr. 1, 1985) 5

United States v. *Nardello*, 393 U.S. 286 4

Statute and regulations:

Travel Act, 18 U.S.C. 1952:

18 U.S.C. 1952(a)(1) ..... *passim*

18 U.S.C. 1952(a)(2) 5

18 U.S.C. 1952(a)(3) 5

18 U.S.C. 371 2

Miscellaneous:

H.R. Rep. 966, 87th Cong., 1st Sess. (1961) 4, 5

Page

Miscellaneous—Continued:

Legislation Relating to Organized Crime: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary, 87th Cong., 1st Sess. (1961) 4

S. Rep. 644, 87th Cong., 1st Sess. (1961) 4, 5

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1488

GIOVANNI LIGNAROLO AND MARIO LIGNAROLO,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The decision of the court of appeals (Pet. App. 1-18) is reported at 770 F.2d 971.

JURISDICTION

The judgment of the court of appeals was entered on September 10, 1985. A petition for rehearing was denied on November 14, 1985 (Pet. App. 19). The petition for a writ of certiorari was filed on March 4, 1986, and is therefore substantially out of time under Rule 20.1 of the Rules of this Court.[1]

---

[1]The petition was due on January 13, 1986, and is therefore almost two months out of time. Counsel for petitioners has not filed a notarized statement setting forth details of the mailing, as required under these circumstances by Sup. Ct. R. 28.2.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner Giovanni Lignarolo was convicted on three counts and petitioner Mario Lignarolo on one count of interstate travel with intent to distribute the proceeds of an unlawful activity, in violation of the Travel Act, 18 U.S.C. 1952(a)(1). Petitioners were also convicted on one count of conspiracy to violate the Travel Act, in violation of 18 U.S.C. 371. They were sentenced to concurrent terms of three years' imprisonment, all but six months of which were suspended, to be followed by two years' probation. The court of appeals affirmed. Pet. App. 1-18.

1. The evidence at trial is described in detail in the opinion of the court of appeals. Pet. App. 2-7. Briefly, the evidence established that petitioners knowingly laundered $3.5 million in proceeds of a "massive and excessively profitable marijuana operation." *Id.* at 14-15. Petitioners laundered these funds by depositing them as cash in a New York bank account and then transferring them by wire to other accounts, chiefly in Miami. *Id.* at 2.

Five transactions from December 1979 to March 1980 formed the basis for the indictment. In the first, Mario Lignarolo brought $350,000 in cash to the New York bank. He explained to an undercover FBI agent that there would be several more deposits because the proceeds from the underlying marijuana shipment totalled $2.6 million. The funds were deposited in New York and wired to Miami, where they were withdrawn by a check payable to a Colombian business firm. Pet. App. 4. The second transaction involved $700,000 in cash, which was laundered in a similar manner. *Id.* at 5. During the third transaction, which involved $1 million, Giovanni Lignarolo, Mario's brother, explained to an undercover agent that there would have

been more money except that the marijuana traffickers were having difficulty making sales. *Ibid.* The final two transactions involved a total of $1.5 million. *Id.* at 6-7.

2. The court of appeals affirmed petitioners' convictions. Pet. App. 1-18. The court held that neither the language nor the legislative history of the Travel Act supported petitioners' argument that the government was required to show that they were co-conspirators in the marijuana trafficking enterprise. Pet. App. 8-13. The court also held that the evidence was sufficient to show that that the funds ultimately were transferred to participants in the marijuana distribution scheme. *Id.* at 17-18.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. Petitioners argue first (Pet. 7-14) that the Travel Act requires proof that they were co-conspirators in or otherwise closely associated with the illegal drug trafficking enterprise that generated the funds that they laundered. The court of appeals, in an opinion on which we rely, carefully considered and correctly rejected this contention as well as petitioners' claim of a conflict with *United States* v. *Gibson Specialty Co.*, 507 F.2d 446 (9th Cir. 1974). Pet. App. 8-13.

Petitioners were charged with violating 18 U.S.C. 1952(a)(1), which proscribes interstate travel with "intent to * * * distribute the proceeds of any unlawful activity," followed by such distribution. Petitioners do not now dispute that the government proved that they "traveled from Miami to New York City for the express purpose of collecting proceeds generated by substantial marijuana trafficking, that [they] collected currency of the United States which [they] knew constituted such proceeds, and that [they] distributed that currency by causing the undercover agents to

deposit it in * * * [a New York bank account] and then to wire it to various bank accounts in New York City and Miami." Pet. App. 9. Nor do petitioners now dispute that the marijuana distribution scheme constituted an unlawful activity within the meaning of the statute. See *id.* at 14-16. Rather, they contend that Section 1952(a)(1) requires proof that they were co-conspirators in that scheme.

The plain language, legislative history, and purpose of the Travel Act demonstrate that petitioners' contention is without merit. By its terms, Section 1952(a)(1) makes no mention of involvement with the underlying illegal activity apart from the distribution of proceeds from that activity, as petitioners recognized below. Pet. App. 9. Similarly, the legislative history of the statute demonstrates that it was intended "to impede the clandestine flow of profits from criminal ventures." S. Rep. 644, 87th Cong., 1st Sess. 4 (1961); H.R. Rep. 966, 87th Cong., 1st Sess. 4 (1961); see also *United States* v. *Nardello,* 393 U.S. 286, 292 (1969). Attorney General Kennedy explained that the Act would allow the federal government "to prosecute the courier who carries the funds across State lines," such as "the messenger [who] carrie[s] the profits of [a] numbers racket from the scene of operations [New York] to the resort town [Miami]." *Legislation Relating to Organized Crime: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary* (*Hearings*), 87th Cong., 1st Sess. 21, 22 (1961); see also *id.* at 24 (Act would reach "interstate travel * * * to deliver the profits of an illegal enterprise"). Petitioners fit precisely within this category of intended targets of the Act.[2]

---

[2]The legislative history on which petitioners rely (Pet. 9-11) is not to the contrary. While the Attorney General referred in his testimony to the " 'bagman' " who "acts as a clearinghouse and accountant for the group" (*Hearings* 22), there is no indication that he intended by this to exclude from the coverage of the statute "courier[s]" (*ibid.*) and "messenger[s]" (*id.* at 21), such as petitioners, who deliver the profits of an

Petitioners' claim (Pet. 12-14) of a conflict with *United States* v. *Gibson Specialty Co., supra,* was correctly rejected by the court below. Pet. App. 10-11. That case involved a different subsection of the Travel Act, 18 U.S.C. 1952(a)(3), which requires that the travel be undertaken with the intent to "promote * * * or facilitate the promotion * * * of any unlawful activity." See *Gibson Specialty Co.*, 507 F.2d at 449 ("intent to facilitate a criminal venture is expressly made part of the offense"). No such requirement appears in subsection 1952(a)(1).[3] Moreover, that case involved defendants who sold bingo equipment, which had legitimate uses, by mail to persons with whom they had no other contacts. Petitioners, by contrast, had extensive personal contacts with narcotics traffickers, and their "service" —the laundering of millions of dollars in cash—can scarcely be described as a common legitimate business practice. For all these reasons, *Gibson Specialty Co.* would not

---

illegal enterprise without being involved in its bookkeeping. The Senate report, S. Rep. 644 (which petitioners misquote and erroneously cite as S. Rep. 655), establishes only that the Act would not impede interstate travel except when undertaken with the unlawful intent specified in the statute.

[3]Petitioners seek to avoid this obvious distinction solely by focusing on the word "otherwise" in subsection 1952(a)(3), which, they claim, suggests that Congress intended to require proof of promotion or facilitation under subsections (1) and (2) as well. The most natural reading of the entire statute, however, is that Congress recognized that the distribution of illegal profits, made unlawful under subsection (1), commonly would have the effect of promoting or facilitating the underlying enterprise. The plain language of the statute makes clear that Congress did not intend at the same time to impose an additional proof requirement under that subsection. Cf. *United States* v. *Locke,* No. 83-1394 (Apr. 1, 1985), slip op. 18; see also Pet. App. 13 n.10 ("the laundering of money [often] is an essential component of drug trafficking; as such, it facilitates the business").

have required the reversal of petitioners' convictions under 18 U.S.C. 1952(a)(1) in the Ninth Circuit.[4]

2. Petitioners also contend (Pet. 14-16) that the court of appeals erred in finding that the evidence was sufficient to show that the laundered funds were "distributed" within the meaning of 18 U.S.C. 1952(a)(1). The court of appeals correctly decided this factbound contention against petitioners, and it plainly merits no further review. The evidence showed that both petitioners were aware that the massive sums of money that they were laundering came from sales of Colombian marijuana and that those funds were being deposited in New York for transfer to Miami. Pet. App. 2-7, 17. Petitioners' knowing participation in the series of transfers of funds from New York to Miami clearly constituted a "distribution" of those funds.

Petitioners' claim (Pet. 15-16) of a conflict with *United States* v. *Lightfoot*, 506 F.2d 238 (D.C. Cir. 1974), is unavailing. In *Lightfoot*, the court held that the purchase of an automobile with the proceeds of an illegal activity did not constitute the distribution of those proceeds within the meaning of the statute. See *id.* at 241 ("The word 'distribute' simply does not encompass the concept of buying an article in the normal course of trade."). In this case, by contrast, the evidence showed that the transfer of the laundered money was not an expenditure of funds for purchased goods, but was part of the process of "moving" the profits from a series of drug sales. The marijuana had been exported from Colombia and sold in the United States, and the multi-million dollar proceeds were deposited back into Miami accounts, at least one of which belonged to a

---

[4]We also note that *Gibson Specialty Co.* has had little influence on the development of the law. Apart from the decision below, it has been cited in the courts of appeals only twice, both times for unexceptional propositions irrelevant to this case.

Colombian company. Under these circumstances, the court of appeals was surely correct in concluding (Pet. App. 17) that it was permissible to infer, simply as a matter of economics, that the funds were intended to be recycled to members of the marijuana enterprise, who were responsible for procuring, importing, and selling the drugs.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FRIED
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

SARA CRISCITELLI
Attorney

APRIL 1986

DOJ-1986-04